IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

WP(C).No. 25202 of 2004(A)

PETITIONER:

THOMAS.T.J. AGED 50, COACH IN SWIMMING
DEPARTMENT OF PHYSCIAL, EDUCATION, MAHATMA GANDHI UNIVERSITY, KOTTAYAM.

BY ADV. SRI.GEORGE ABRAHAM

RESPONDENTS:
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1. THE VICE CHANCELLOOR, MAHATMA GANDHI UNIVERSITY, KOTTAYAM.

2. THE MAHATMA GANDHI UNIVERSITY, REP. BY ITS REGISTRAR, KOTTAYAM.

3. THE SYNDICATE REP. BY ITS CHAIRMAN, MAHATMA GANDHI UNIVERSITY, SECRETARIAT, TRIVANDRUM.

ADDL. R4. P.V.VELSEY
COACH IN ATHLETICS
DEPT. OF PHYSICAL EDUCATION
M.G.UNIVERSITY, PRIYADARSHINY HILLS
KOTTAYAM

Additional R4 impleaded vide order dated 28-3-06 in I.A.No.4064/06

BY ADV. SRI.V.K.MUHAMMAD YOUSUF, SC, M.G.UTY.
SRI.BABU PAUL
SRI.V.A.MUHAMMED
G.P.SRI.T.T.MUHAMMED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE ORDER DTD. 15-9-00 ISSUED BY R2**
EXT.P2	**TRUE COPY OF THE REPRESENTATION DTD. 25-11-97**
EXT.P3	**TRUE COPY OF THE ORDER DTD. 3-1-02 ISSUED BY R1**
EXT.P4	**TRUE COPY OF THE ORDER DTD. 29-3-02 ISSUED BY R1**
EXT.P5	**TRUE COPY OF THE JUDGMENT OF THIS COURT IN O.P.NO.3453/03**
EXT.P6	**TRUE COPY OF THE ORDER DTD. 6-6-1989 OF R4**
EXT.P7	**TRUE COPY OF THE ORDER DTD. 17-7-89 OF R4**
EXT.P8	**TRUE COPY OF THE PETITION DTD. 4-6-04 OF THE PETITIONER BEFORE R2.**
EXT.P9	**TRUE COPY OF THE LETTER DTD.12-8-04 ISSUED BY THE FIRST RESPONDENT TO ITS STANDING COUNSEL AND COPY FORWARDED TO THE PETITIONER.**
EXT.P10	**TRUE COPY OF THE ORDER ISSUED BY KERALA SPORTS COUNCIL DATED 2-3-1986 GRANTING PETITIONER LEAVE FOR ONE YEAR**
EXT.P11	**TRUE COPY OF PETITIONER'S LETTER DTD. 21-2-1986 FOR RELIEVING HIM FROM THE KERALA SPORTS COUNCIL.**
EXT.P12	**TRUE COPY OF CERTIFICATE ISSUED BY THE KERALA SPORTS COUNCIL DTD.24-11-1997 REGARDING PETITIONER'S SCALE OF PAY.**
EXT.P13	**TRUE COPY OF ORDER DTD. 13-11-06 ISSUED TO SHRI.P.V.VELSY**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No.25202 OF 2004

Dated this the 27th day of February, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner was appointed as Coach in Swimming in Kerala Sports Council on 21-08-1980. He continued in the Kerala Sports Council as Swimming Coach till 10-12-1985. Thereafter he was appointed as Coach in Swimming in the Mahatma Gandhi University with effect from 11-12-1985. He completed 10 years of service on 21-08-1990 and he is entitled to higher Grade taking into account the service rendered by him in the Kerala Sports Council. It was granted by Ext.P1 order by the Registrar. However, in Ext.P9 it is stated that the syndicate of the University at its meeting held on 20-07-2004 has considered the issue and resolved not to ratify the action taking by the Vice-Chancellor awarding the benefit of grade promotion to the petitioner

reckoning the previous service put in the Kerala Sports Council. Petitioner challenges Ext.P9 and seeks a declaration that he is entitled to get the benefit and seeks further declaration also.

2. Counter is filed, wherein reference is made to Rule 29 of Part III of Kerala Service Rules to contend that resignation of the public service or dismissal or removal from it, entails forfeiture of past service. Reference is also made to Rule 33 of Part II of K.S. & S.S.R.. There is also reference to Government order dated 27-11-1979.

3. Reply affidavit is also filed by the petitioner, wherein reliance is placed on Rule 29(b) of Part III K.S.R and it is contended that the resignation of the petitioner is to take up employment with the University and taking up employment in the University does not amount to forfeiture of past service.

4. There is no reference to Rule 29 as such in Ext.P9. Whatever that be, I feel that the question as to whether petitioner was denied the benefit on the basis of Rule 29 and whether the

petitioner is entitled to the benefit of Rule 29(b) of Part III K.S.R. is not specifically adverted to in Ext.P9. I feel that a fresh decision is to be taken in the matter and there should be a re-consideration. Accordingly, Ext.P9 is quashed and respondents 1 to 3 will re-consider the matter and take a fresh decision in the matter in accordance with law within a period of two months from the date of receipt of a copy of this judgment.

Writ petition is disposed of as above.

K.M.JOSEPH
JUDGE

sv.